



December 7, 2017

DEC 11 2017

VIA CERTIFIED MAIL

National Ready Mixed Concrete Company
15821 Ventura Boulevard, Suite 475
Encino, California 91436

National Ready Mixed Concrete
4549 Brazil Street
Los Angeles, California 90039

VIA UNITED STATES MAIL

CT Corporation
Vivian Imperial
Registered Agent for Service of Process for
National Ready Mixed Concrete Company
818 W Seventh Street, Suite 930
Los Angeles, California 90017

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

To the Above-Listed Recipients:

I am writing on behalf of Los Angeles Waterkeeper ("Waterkeeper") regarding violations of the Clean Water Act¹ and California's Industrial Storm Water Permit² ("Storm Water Permit") occurring at the industrial facility with its main address at: 4549 Brazil Street in Los Angeles, California 90039 ("Facility" or "National Facility"). The purpose of this letter is to put National Ready Mixed Concrete Company ("National"), as the owner and/or operator of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water and non-storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, National is liable for violations of the Storm Water Permit and the Clean Water Act.

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

² National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Waterkeeper refers to as the "1997 Permit." The Storm Water Permit was reissued on July 1, 2015, pursuant to Order No. 2014-0057-DWQ, which Waterkeeper refers to as the "2015 Permit."

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This letter is being sent to you as the responsible owner and/or operator of the Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform National that Waterkeeper intends to file a federal enforcement action against National for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

I. BACKGROUND

A. Los Angeles Waterkeeper.

Los Angeles Waterkeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, California 90401. Founded in 1993, Waterkeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles area. Waterkeeper is dedicated to the preservation, protection, and defense of the inland and coastal surface waters of Los Angeles County from all sources of pollution and degradation. To further this mission, Waterkeeper actively seeks federal and state implementation of the Clean Water Act. Where necessary, Waterkeeper directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper reside in Los Angeles County, and use and enjoy the Los Angeles River, the Los Angeles River Estuary, the Los Angeles/Long Beach Harbor, San Pedro Bay, and the Pacific Ocean (hereinafter "Receiving Waters"). As explained in detail below, National continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the Storm Water Permit. Waterkeeper members use the Receiving Waters to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and run. Additionally, Waterkeeper members use the Receiving Waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs Waterkeeper members' use and enjoyment of these waters. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by National's failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owner and Operator of the Facility.

Information available to Waterkeeper indicates that National Ready Mixed Concrete Company is the owner and operator of the Facility. National is an active California corporation

and its registered agent is: CT Corporation at 818 W. Seventh Street, Suite 930 in Los Angeles, California 90017.

C. The Facility's Storm Water Permit Coverage.

Facilities that discharge storm water associated with certain classified industrial activities are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage.

Information available to Waterkeeper indicates that National first obtained coverage under the Storm Water Permit on or about April 2, 1992, and submitted an NOI to continue the Facility's coverage under the reissued 1997 Permit. Waterkeeper obtained National's March 5, 2015, NOI to continue coverage under the reissued Storm Water Permit ("2015 NOI") from the Storm Water Multiple Application Report Tracking System ("SMARTS") database. Waterkeeper also obtained National's June 10, 2015, Storm Water Pollution Prevention Plan ("SWPPP") (hereinafter referred to as "2015 SWPPP") from the SMARTS database. The 2015 SWPPP is signed by Russell H. Morton who is identified as the Facility's "Legally Responsible Person (LRP) or Duly Authorized Representative (DAR)."

The 2015 NOI identifies the "Operator Information" as "National Ready Mixed Concrete Company," located at 15821 Ventura Boulevard, Suite 475 in Encino, California 91436. The 2015 NOI identifies the "Site Name" as "National Ready Mixed Concrete," located at 4549 Brazil Street in Los Angeles, California 90039. The 2015 NOI lists the "Total Site Size" as 1 acre, but does not provide the "Industrial Area Exposed to Storm Water," or the "Percent of Site Impervious (Including Rooftops)" The 2015 SWPPP lists the Facility size as 1.1 acres. The 2015 NOI lists the Waste Discharge Identification ("WDID") number for the Facility as 4 19I002977, and the "Receiving Water" as the Los Angeles River.

The 2015 NOI identifies the Standard Industrial Classification ("SIC") code for the Facility as 3273 (Ready Mix Concrete). The 2015 SWPPP lists SIC code 3273, and includes SIC code 7538 (General Automotive Repair Shops). Information available to Waterkeeper indicates that SIC code 7538 is applicable to facilities that "primarily engage in general automotive repair," and the National Facility does not primarily engage in automotive repair. Information available to Waterkeeper, including the Facility's 2015 SWPPP describing vehicle and equipment maintenance, cleaning, repair and/or storage at the Facility, indicates that SIC code 4231 (terminal and joint terminal maintenance facilities for motor freight transportation) and/or 4212 (local trucking without storage) also apply to the Facility's industrial activities.

D. Storm Water Pollution.

With every significant rainfall event millions of gallons of polluted storm water originating from industrial facilities, such as the National Facility, discharge into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each

year. The discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that surface waters have for people in local communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to local waterways.

Polluted discharges from concrete mixing facilities such as the National Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS");³ nitrite plus nitrate ("N+N"); benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; total kjehldahl nitrogen ("TKN"); trash; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Health & Saf. Code §§ 25249.5 - 25249.1. Discharges of polluted storm water pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Facility Site Description and Industrial Activities.

The National Facility is bordered by Brazil Street to the South and is located 500 feet west of San Fernando Road and ¼ mile east of the Los Angeles River. Information available to Waterkeeper indicates that the Facility is engaged in receiving raw materials including aggregate (rock, sand, and gravel), cement, fly ash, and admixtures and producing concrete at the batch plant. *See* 2015 SWPPP, § 1.0. The concrete is loaded into trucks and shipped to customers. *Id.* The Facility also accepts returns of unused concrete, which is removed from the mixer trucks and stored on-site. *See id.* at § 6.1.1. The Facility engages in vehicle and equipment cleaning,

³ High concentrations of TSS degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

maintenance, fueling, parking and storage. *Id.* at § 1.0. The Facility also engages in dust and particulate generating activities, and uses water spray to control emissions from the concrete batch operation. *See id.* at § 3.2; *see also id.* at § 6.3. Finally, hazardous materials are used and stored throughout the Facility. *Id.* at § 3.2; *see also id.* at § 6.2.1.

In addition to the industrial activities described above, the following areas of industrial activity are also sources of pollutants at the Facility: the concrete production area; material storage pile areas; the mobile equipment operations, fueling, and maintenance areas; the vehicle and mobile equipment parking areas; the conveyor belts, haul trucks, and mobile equipment that transports aggregate material throughout the Facility; and the handling and storage of hazardous wastes that occurs throughout the Facility. Material tracking occurs throughout the Facility, and at the egress and entrance points at the Facility. These industrial activities and areas of industrial activity are all significant pollutant sources at the Facility.

B. Facility Pollutants and BMPs.

The pollutants associated with operations at the Facility include, but are not limited to: pH-affecting substances; metals, such as iron, aluminum, lead, zinc, cadmium, chromium, copper, and arsenic; COD; BOD; TSS; N+N; benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; O&G; and trash and debris.

Information available to Waterkeeper indicates that concrete, particulates of sand, gravel, and cement have been and continue to be tracked throughout the Facility. These pollutants accumulate at the sand and gravel storage areas and near the silos, the loading and unloading areas, and the driveways leading to and from the Facility. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, oil and gas, metal particles, and other pollutants off site.

Information available to Waterkeeper indicates that raw materials are stored outside and exposed to precipitation and wind, and that weighing and mixing activities occur outside without adequate cover or containment, resulting in discharges of polluted storm water. Additionally, metal parts and hazardous materials associated with maintenance, fueling, and washing of the concrete trucks occur outside without secondary containment or other measures to prevent polluted storm water and prohibited non-storm water from discharging from the Facility.

Information available to Waterkeeper indicates National has not properly developed and/or implemented the necessary best management practices ("BMPs") to address pollutant sources, pollutants, and resulting contaminated discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility. Due to the lack of BMPs and/or the inadequacy of the BMPs that are utilized at the Facility, industrial activities and pollutants are exposed to precipitation during rain events, and this polluted storm water discharges into the storm drain system, which discharges into the Receiving Waters. Although National states that a detention basin is located on site to capture storm water, there is no discussion in the SWPPP of how it is designed to capture storm water flows, and the SWPPP states that the Facility does not utilize flow-based or

volume-based BMPs. *See* 2015 SWPPP at § 10.3. As discussed herein, polluted storm water and non-storm water continue to discharge from the Facility from numerous locations.

In addition, the Regional Board conducted an inspection of the Facility on September 13, 2013 (“Inspection”) and issued a Notice to Comply for inadequate BMPs. The Regional Board issued an Industrial Storm Water Inspection Report on October 3, 2013 (“Inspection Report”), which documents the violations of the Storm Water Permit, and elevated levels of pollutants in storm water discharges.

Finally, the majority of the BMPs listed for the numerous toxic pollutants present at the Facility include only general good housekeeping measures such as sweeping and visual observations. *See* 2015 SWPPP, § 8.1.2. Despite the numerous pollutants associated with National’s industrial activities, and the minimal BMPs listed in the SWPPP, National claims that additional actions and BMPs are not required. *See e.g.* National’s Annual Reports for the Facility. Often, when a minimal BMP is listed it is not identified as a required BMP, and instead the SWPPP states it will be implemented “where feasible.” *See* 2015 SWPPP at § 7.0; *see also id.* at § 8.1.2; *see also id.* at § 8.1.3. Finally, the 2015 SWPPP also has no schedule for BMP maintenance or repair.

National’s failure to develop and/or implement required BMPs results in discharges of storm water and non-storm water in violation of the Storm Water Permit and the Clean Water Act. These illegal discharges of polluted storm and non-storm water negatively impact Waterkeeper’s members’ use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and by posing risks to human health and aquatic life.

C. Facility Storm Water Flows and Discharge Locations.

Information available to Waterkeeper indicates that storm water at the Facility discharges into the Los Angeles County municipal storm drain system, which discharges to the Los Angeles River. According to the Facility’s 2015 SWPPP, the Facility discharges into Reach 3 of the Los Angeles River, which runs from Figueroa Street to Riverside Drive.

The Regional Board issued the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura County* (“Basin Plan”). The Basin Plan identifies the “Beneficial Uses” of the Los Angeles River that receives polluted storm water discharges from the Facility. These Beneficial Uses include: warm freshwater habitat (“WARM”), wildlife habitat (“WILD”), wetland habitat (“WET”), and ground water recharge (“GWR”) as existing Beneficial Uses, and municipal and domestic supply (“MUN”) and industrial service supply (“IND”) as potential Beneficial Uses. *See* Basin Plan, Table 2-1.

A waterbody is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants. According to the 303(d) List of Impaired Water Bodies, which is attached as Appendix 3 to the 2015 Permit, Reach 3 of the Los Angeles River is listed as impaired for the

following pollutants: ammonia, copper, lead, nutrients, and trash.⁴ Polluted discharges from the Facility cause and/or contribute to the degradation of this already impaired surface water and aquatic dependent wildlife. For the aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Facility, must be eliminated.

The 2015 SWPPP states that there is a single drainage area at the Facility. However, information available to Waterkeeper indicates that the Facility contains more than one (1) drainage area, which the Storm Water Permit defines as the “area of land that drains water, sediment, pollutants, and dissolved materials to a common discharge location.” Storm Water Permit, Appendix C.

The 2015 SWPPP states that storm water that falls on the Facility is directed to a detention basin. *See* 2015 SWPPP at § 1.0; *see also id.* at § 4.1. The 2015 SWPPP also states that if storm water discharges from the Facility, it will be from the driveway south of the Facility, which is designated as Outfall 1 (OF1) on the Facility site map *Id.* at § 4.1. The SWPPP further states that “[w]ater from the driveway approaches flow out the facility driveway along Norris Avenue,” and “[s]torm water that is discharged from the site flows to storm drains that empty into the Los Angeles River.” *Id.* at § 1.0.⁵ Information available to Waterkeeper indicates that if a detention basin exists, it is insufficient in size and design to collect, and contain storm water falling at the Facility, and that storm water discharges from the Facility including out the driveways leading to Brazil Street.

III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with certain classified industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, National is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act’s legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) (“[l]imitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect”); *see also CSPA v. River City Waste Recyclers*, 2016 U.S. Dist. LEXIS 120186, at *13-18 (E.D.Cal. Sep. 2, 2016).

⁴ *See also* 2014/2016 Integrated Report – All Assessed Waters, available at: https://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2014_2016.shtml.

⁵ Norris Avenue does not border the Facility.

A. Discharges of Unauthorized Non-Storm Water from the Facility in Violation of the Storm Water Permit Discharge Prohibition.

Except as authorized by Special Conditions D(1) of the 1997 Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III(B). Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III(B).

Information available to Waterkeeper indicates that dust-generating activities occur at the Facility, and that the Facility utilizes a water spray system as a dust suppressant during these activities. *See* 2015 SWPPP, § 3.2. Information available to Waterkeeper also indicates that vehicle and equipment washing and cleaning occurs at the Facility. Information available to Waterkeeper indicates that the dust suppressant water and/or wash water discharges from the Facility as unauthorized non-storm water discharges due to inadequate BMP development and/or implementation necessary to prevent these discharges.

Waterkeeper puts the National on notice that the Storm Water Discharge Prohibition is violated each time non-storm water is discharged from the Facility. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III(B). These discharge violations are ongoing and will continue until National develops and implements BMPs that prevent prohibited non-storm water discharges or obtains separate NPDES permit coverage. Each time National discharges prohibited non-storm water in violation of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). National has been in violation since December 7, 2012, and Waterkeeper will update the dates of violations when additional information and data become available. National is subject to civil penalties for all violations of the Clean Water Act occurring since December 7, 2012.

B. Discharges of Polluted Storm Water in Violation of the Storm Water Permit's Requirement to Develop and Implement BMPs That Achieve BAT/BCT.

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic⁶ and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.⁷ The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A).

⁶ Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

⁷ Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

As discussed herein, information available to Waterkeeper indicates that BMPs that achieve BAT/BCT have not been developed and/or implemented at the Facility. The 2015 SWPPP, observations by Waterkeeper, and analytical results of storm water sampling at the Facility containing pollutants in excess of EPA Benchmark Levels demonstrate that National has failed and continues to fail to develop and/or implement BMPs that achieve BAT/BCT. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.⁸ For example, samples of storm water collected from the Facility document that storm water containing levels of iron, copper, TSS, pH, aluminum, zinc, and nitrite plus nitrate above EPA's Benchmark Levels is discharged from the Facility. *See* Exhibit 1 attached hereto which sets out a table with the results of sampling of storm water discharges compared to EPA Benchmark Levels. Information available to Waterkeeper including the significant exceedances of EPA Benchmarks demonstrates that National has failed and continues to fail to develop and/or implement BMPs at the Facility to achieve compliance with the BAT/BCT standards.

Waterkeeper puts National on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of significant rain events measured at a nearby rain gauge).⁹ These discharge violations are ongoing and will continue every time National discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. National has been in violation of the Storm Water Permit Effluent Limitation since December 7, 2012 and Waterkeeper will update the dates of violations when additional information and data become available. Each time National discharges polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). National is subject to civil penalties for all violations of the Clean Water Act occurring since December 7, 2012.

Further, Waterkeeper puts National on notice that the Storm Water Permit Effluent Limitation is a separate, independent requirement with which National must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitation. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in

⁸ *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

⁹ A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.¹⁰

C. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same Receiving Water Limitation. *See* 2015 Permit, Receiving Water Limitation VI(B). Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit's Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI(B).

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").¹¹ The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI(A). Discharges that contain pollutants in excess of an applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI(A).

Information available to Waterkeeper indicates that the Facility's storm water discharges contain concentrations of pollutants that can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitation. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI(B).

¹⁰ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. However, an exceedance of an NAL may indicate a failure to develop BAT/BCT, and/or an exceedance of a water quality standard.

¹¹ The Basin Plan designates Beneficial Uses for the Receiving Water. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Water's Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

Information available to Waterkeeper also indicates that storm water discharges from the Facility cause or contribute to violations of WQSs. *See* Exhibit 1. Discharges of storm water containing levels of pollutants that exceed WQSs are violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI(A).

Waterkeeper puts National on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.,* Exhibit 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI(A) of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI(B) of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). National has been in violation of the Receiving Water Limitations since December 7, 2012, and Waterkeeper will update the dates of violation when additional information and data becomes available. National is subject to civil penalties for all violations of the Clean Water Act occurring since December 7, 2012.

Further, Waterkeeper puts National on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which National must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent water quality based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a water quality standard.¹²

D. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan.

The Storm Water Permit requires permittees to develop and implement a Storm Water Pollution Prevention Plan prior to conducting, and in order to continue, industrial activities. A permittee has an ongoing obligation to revise the SWPPP as necessary to ensure compliance with the Storm Water Permit. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

¹² “The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit.” 2015 Permit, Finding 63, p. 11. However, an exceedance of an NAL may indicate a failure to develop BAT/BCT, and/or an exceedance of a water quality standard.

1. 1997 Permit SWPPP Requirements.

Section A(1) and Provision E(2) of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the 1997 Permit. The objectives of the 1997 Permit SWPPP requirements are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

2. 2015 Permit SWPPP Requirements.

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objectives of the 2015 Permit SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, identification of areas of soil erosion and impervious areas, areas of actual and potential pollutant contact, including the extent of pollution-generating activities,

nearby water bodies, and pollutant control measures. *See* 2015 Permit, Section X(A)-(H). The SWPPP must also contain a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification of non-storm water discharges and the elimination of unauthorized non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. *Id.*

Further, permittees must establish individuals who will implement the requirements of the Storm Water Permit including conducting the required visual observations, collection of storm water samples, and otherwise preparing for storm events as set forth in each facility SWPPP. *See* 2015 Permit, Section X(D)(1). For example, the SWPPP must include the identity and position of individuals who will carry out the permit requirements, including specifically the responsibilities, duties, activities each member is in charge of. *Id.* The SWPPP must also contain "procedures to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned team members are temporarily unavailable (due to vacation, illness, out of town business, or other absence)." *Id.* at Section X(D)(a)(c).

Finally, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

3. National Has Violated and Continues to Violate the Storm Water Permit's SWPPP Requirements.

Information available to Waterkeeper indicates that National has been and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP. For example, in violation of Section A(4) of the 1997 Permit and Section X(E)(3) of the 2015 Permit, the site map fails to, among other things, identify all areas of industrial activity, all discharge locations, drainage areas, and areas where materials are directly exposed to precipitation. *See* 2015 SWPPP, Appendix A (site map). In addition, the site map fails to list all structural control measures, such as the detention basin that is identified in the 2015 SWPPP. *See id.*; *see also* 2015 SWPPP at §1.0.

The 2015 SWPPP also fails to include an adequate assessment of potential pollutant sources or BMPs that achieve the BAT/BCT standards, as required by Section A(6) of the 1997

Permit and Sections X(G) and X(H) of the 2015 Permit. Information available to Waterkeeper indicates that the National SWPPP also fails to address all areas of industrial activity and/or all areas of pollutant sources and corresponding pollutants. In addition, National has not adequately revised the Facility SWPPP, as required by Section A(7) of the 1997 Permit and Section X(D)(2)(a) of the 2015 Permit. National's failure to develop, implement and/or revise the SWPPP is a violation of the Storm Water Permit.

Finally, the 2015 SWPPP fails to identify a pollution prevention team as required by the Storm Water Permit, including identifying what individual(s) will conduct visual monitoring, what individual(s) will collect storm water samples, what individuals will implement the SWPPP and M&RP, and what procedures are developed to identify alternate team members to carry out the required actions if assigned team members are unavailable. *See* 2015 Permit, Section X(D). The 2015 SWPPP completely fails to comply with these requirements and does not identify what individual at the Facility is responsible for each of the above-listed requirements.¹³

National has failed and continues to fail to adequately develop, implement, and/or revise a SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. National has been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least December 7, 2012. These violations are ongoing and continuous, and Waterkeeper will include additional violations when information becomes available. National is subject to civil penalties for all violations of the Clean Water Act occurring since December 7, 2012.

E. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program.

The Storm Water Permit requires permittees to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting, and in order to continue, industrial activities.¹⁴ A permittee has an ongoing obligation to revise the M&RP as necessary to ensure compliance with the Storm Water Permit. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 Permit M&RP Requirements.

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure BMPs are effective in complying with the Storm Water Permit's

¹³ Waterkeeper notes that the same individuals are listed as the "SWPPP Team Members" for this Facility, and for at least ten (10) other facilities owned and/or operated by National Ready Mixed Concrete Company.

¹⁴ The 2015 Permit refers to the M&RP as the Monitoring Implementation Plan or "MIP."

Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

Information available to Waterkeeper indicates that the Facility is part of the Building Material Industry Monitoring Program, and thus National must comply with the group monitoring provisions set forth in Section B(15) of the 1997 Permit. Under Section B(15) of the 1997 Permit, permittees must collect at least two (2) samples from each discharge point at the Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15). Storm water samples must be analyzed for TSS, pH, specific conductance (“SC”), total organic carbon or O&G, and other pollutants that are likely to be present in the facility’s discharges in significant quantities. *See* 1997 Permit, Section B(5)(c). The 1997 Permit requires facilities classified as SIC code 3273, such as the National Facility, to also analyze storm water samples for iron. *Id.*; *see also* 1997 Permit, Table D.

Section B(7)(d) of the 1997 Permit allows for the reduction of sampling locations in very limited circumstances when “industrial activities and BMPs within two or more drainage areas are substantially identical.” If a discharger seeks to reduce sampling locations, the “[f]acility operators must document such a determination in the annual report.” *Id.*

2. 2015 Permit M&RP Requirements.

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility’s discharge, and to ensure compliance with the 2015 Permit’s Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or

eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency over the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event¹⁵ from each discharge location, and within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Facilities that are in a Compliance Group, must make specific certifications on SMARTS (*see id.* at XIV), and must collect and analyze storm water samples from one (1) qualifying storm event within the first half of the reporting year¹⁶ (July 1 to December 31), and one (1) qualifying storm event within the second half of the reporting year (January 1 to June 30). *Id.* at XI(B)(3). Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining results for each sampling event.

The parameters to be analyzed are also consistent with the 1997 Permit. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c) of the 2015 Permit requires permittees to analyze samples for pollutants associated with all industrial operations. Section XI(B)(6)(d) requires additional parameter analysis based on a facility's SIC code, which for the Facility includes iron. *See* 2015 Permit, Table 1. Finally, Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

Finally, as in the 1997 Permit, the 2015 Permit requires storm water samples be collected from all discharge locations. 2015 Permit, Section XI(B)(5). The requirements to allow for reduced sample collection locations were strengthened in the 2015 Permit and must provide a Representative Sampling Reduction Justification, revise the M&RP, and provide both to the Regional Board via SMARTS. *See* 2015 Permit, Section XI(C)(4).

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¹⁵ The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

¹⁶ A reporting year is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

3. National Has Violated and Continue to Violate the Storm Water Permit M&RP Requirements.

National has been and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, National has failed and continues to fail to conduct the required visual observations. *See* 1997 Permit, Section B(3); *see also* 2015 Permit, Section XI(A)(1). Information available to Waterkeeper indicates that the failure to conduct observations as required by the Storm Water Permit, as well as the failure to comply with other M&RP requirements, is due in large part to National's failure to designate individuals at the Facility that are responsible for compliance with the Storm Water Permit's M&RP requirements.

National also fails to collect storm water samples as required by the Storm Water Permit. For example, National consistently fails to collect storm water samples from all required sample locations, does not collect samples from required number of storm events, and/or from the first storm event of the year. *See* National's Annual Reports for the Facility; *see also* 2015 SWPPP, § 10.

National also fails to analyze samples for all parameters required by the Storm Water Permit including those associated with its industrial operations, which include, among others, N+N, zinc, aluminum, COD and copper. National must also analyze samples for parameters based on industrial operations or if there is an impairment in the receiving water(s). Although Table 8 of the 2015 SWPPP lists the Receiving Water as impaired for nutrients, pathogens, trash, and metals, the M&RP does not include the required parameter for analysis for these impairments. *See* 2015 SWPPP, § 10.4.3; *see also* 2015 Permit, Fact Sheet, Section D(7). National has also failed to conduct a pollutant source assessment as required, and does not identify additional constituents based on pollutants associated with its industrial activity. *See* 2015 Permit, Fact Sheet, Section J(3)(b)(iii) ("This General Permit requires Dischargers to control its discharge as necessary to meet the receiving water limitations, and to select additional monitoring parameters that are representative of industrial materials handled at the facility (regardless of the degree of storm water contact or relative mobility) that may be related to pollutants causing a water body to be impaired."). Analyzing storm water samples for all pollutants associated with industrial activities is necessary to determine whether one or more BMPs implemented at the Facility is effective in reducing all pollutants in the discharge. *See* 2015 Permit, Section XI(B)(6)(c).

National's failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of Storm Water Permit. Every day that National conducts operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. National has been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least December 7, 2012. These violations are ongoing, and Waterkeeper will include additional violations when

information becomes available. National is subject to civil penalties for all violations of the Clean Water Act occurring since December 7, 2012.

F. Failure to Comply with the Storm Water Permit's Reporting Requirements.

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any required activities, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirements, and requires the Annual Report be submitted by July 15 each year. *See* 2015 Permit, Section XVI.

National has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. For example, in its Annual Reports National consistently certifies that: (1) a complete Annual Comprehensive Site Compliance Evaluation ("ACSCE") was done pursuant to the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources and additional BMPs are not needed; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper indicates that these certifications are erroneous. For example, sampling data demonstrating elevated levels of pollutants in discharges has been ongoing, and National was notified of the inadequacy of the BMPs in 2013, yet National consistently reports that no additional BMPs are needed and that the Facility is in compliance. Finally, since the Facility's SWPPP and M&RP do not include many elements required by the Storm Water Permit, it is erroneous to certify that these plans comply with the Storm Water Permit.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). National has not reported non-compliance as required.

Information available to Waterkeeper indicates that National has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, National is in daily violation of the Storm Water Permit. Every day National conducts operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). National has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least December 7, 2012. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. National is subject to civil penalties for all violations of the Clean Water Act occurring since December 7, 2012.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009 and \$52,414.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Waterkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Waterkeeper intends to file a citizen suit under Section 505(a) of the Clean Water Act for National's violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Waterkeeper's legal counsel:

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Sincerely,



Bruce Reznik
Executive Director
Los Angeles Waterkeeper

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VIA U.S. MAIL

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EXHIBIT 1

NATIONAL READY MIX: 4549 BRAZIL STREET LOS ANGELES

Sample collected by Coastkeeper (C) or Discharger (D)	Date of sample collection	Parameter	Result	Units	Benchmark	Magnitude of Benchmark Exceedance	California Toxics Rule Criteria/WQO	Magnitude of CTR/WQO Exceedance
Historical Data								
D	2000/2001 Wet Season	Nitrite Plus Nitrate (as N)	2.69	mg/L	0.68	3.96	—	n/a
D	2000/2001 Wet Season	pH	10.54	mg/L	6.0-9.0	1.54 over range	6.5-8.5	2.04 over range
D	2000/2001 Wet Season	Total Suspended Solids (TSS)	285	mg/L	100.0	2.85	—	n/a
D	2000/2001 Wet Season	Iron, Total	5.53	mg/L	1.0	5.53	—	n/a
D	2002/2003 Wet Season	pH	10.1	mg/L	6.0-9.0	1.1 over range	6.5-8.5	1.6 over range
D	2002/2003 Wet Season	Iron, Total	1.11	mg/L	1.0	1.11	—	n/a
D	2002/2003 Wet Season	Nitrite Plus Nitrate (as N)	9.5	mg/L	0.68	13.97	—	n/a
D	2006/2007 Wet Season	pH	8.75	mg/L	6.0-9.0	—	6.5-8.5	.25 over range
D	2006/2007 Wet Season	Specific Conductance	554	umhos/cm	200	2.77	—	
D	2008/2009 Wet Season	Nitrite Plus Nitrate (as N)	1.66	mg/L	0.68	2.44	—	n/a
D	2008/2009 Wet Season	pH	9.37	mg/L	6.0-9.0	.37 over range	6.5-8.5	.87 over range
2015/2016 Wet Season								
D	1/5/16	Iron, Total	0.227	mg/L	1.0	-	—	n/a
D	1/5/16	Oil and Grease	1.54	mg/L	15.0	-	—	n/a
D	1/5/16	Total Suspended Solids (TSS)	11.6	mg/L	100.0	-	—	n/a
D	1/5/16	pH	7	S.U.	6.0-9.0	-	6.5-8.5	n/a
2016/2017 Wet Season								
C	1/19/17	Nitrate Plus Nitrite	2.6	mg/L	0.68	3.82	—	n/a
C	1/19/17	Chemical Oxygen Demand	99	mg/L	120	-	—	n/a
C	1/19/17	Total Suspended Solids (TSS)	220	mg/L	100	2.20	—	n/a
C	1/19/17	pH	11.5	mg/L	6.0-9.0	2.5 over range	6.5-8.5	3 over range
C	1/19/17	Aluminum, Total	60	mg/L	0.75	80.00	—	n/a
C	1/19/17	Copper, Total	0.016	mg/L	0.0123	1.30	0.0109	1.47
C	1/19/17	Iron, Total	7.6	mg/L	1	7.60	—	n/a
C	1/19/17	Zinc, Total	0.24	mg/L	0.11	2.18	0.097	2.47

EXHIBIT 2

Date	Precipitation (Inches)
12/18/12	0.38
12/24/12	0.42
12/26/12	0.26
12/29/12	0.43
1/6/13	0.16
2/19/13	0.18
3/7/13	0.12
3/8/13	0.67
5/6/13	0.4
11/21/13	0.29
11/29/13	0.17
12/19/13	0.25
2/6/14	0.33
2/27/14	0.48
2/28/14	2.03
3/1/14	0.74
4/1/14	0.16
4/2/14	0.18
10/31/14	0.2
11/1/14	0.13
12/3/14	0.23
12/12/14	1.52
1/10/15	0.18
1/11/15	0.14
2/22/15	0.54
3/1/15	0.4
3/2/15	0.19
4/7/15	0.17
4/25/15	0.12
5/14/15	0.95
7/18/15	0.49
9/15/15	2.08
10/4/15	0.12
10/5/15	0.16
12/13/15	0.15
12/19/15	0.12
12/23/15	0.16
1/5/16	0.25
1/7/16	0.11
1/31/16	0.22
2/17/16	0.51
3/6/16	0.79
3/7/16	0.21
3/11/16	0.34
4/8/16	0.16
4/9/16	0.11
11/20/16	0.43